Inner City Press
Community on the Move
&
Fair Finance Watch

July 25, 2005

VIA TELECOPIER to 202-898-7091 / 415-808-7937

Federal Deposit Insurance Corporation
Attn: Mr. Don Powell, Director
Mr. John M. Lane, Associate Director, DOS
Mr. Timothy J. Burniston, Associate Director, DSC
550 17th Street, NW, Washington, DC 20429

Federal Deposit Insurance Corporation
Attn: Ms. Nancy E. Hall, Regional Director,
and Ms. Linda Ortega, Community Affairs Officer
25 Jessie Street, Suite 2300
San Francisco, California 94105-2780

Re: Initial comment opposing the proposal to charter and insure "Wal-Mart Bank"

Dear Director Powell, Ms. Hall, Ms. Ortega, others:

On behalf of Inner City Press/Community on the Move and its members and affiliates, and the Fair Finance Watch (collectively, "ICP"), this is an initial comment opposing, and requesting public hearings on and a copy of, the applications to charter and insure the proposed Wal-Mart Bank (FDIC Application # 20051977).

This application represents the stealth attempted entry of this country's largest and most destabilizing and dis-investing retailer into banking. While cynically styled as no more than a proposal to "enable it to recapture fees that it pays third-party institutions to process the 140 million debit, credit and electronic check transactions at its stores each month," Wal-Mart's financial services director answered the Chicago Tribune's question, whether shoppers could someday shop for mortgages at Wal-Mart, with this phrase: "We continue to look for what makes sense to the customer." (Chicago Tribune, July 2, 2005, "Wal-Mart Seeks Permission to Operate a Bank"). We at ICP continue to look at what make sense to consumers and the public interest, and for this reason request hearings on, and the denial of, Wal-Mart's applications.

On an application to charter and insure a bank, including an industrial loan company, the Federal Deposit Insurance Corporation must consider a range of factors, including managerial integrity, compliance with law and regulation, such as anti-discrimination provisions, including as a predictor of Community Reinvestment Act performance. Wal-Mart has a history of violating the law, and of destabilizing and disinvesting in communities, as set forth below in this comment.

Wal-Mart is subject to the largest anti-discrimination in employment class action lawsuit in U.S. history. "The lawsuit, *Dukes v. Wal-Mart*, alleges that the world's biggest retailer discriminates against its female employees in terms of pay and promotion. Six female employees filed the suit in California in 2001, claiming they were passed over for promotion by men. In June 2004, a California federal judge ruled that the suit could be certified as a class action." Arkansas Democrat-Gazette, June 22, 2005, "Hearing set in suit against Wal-Mart." This is "the largest class-action suit in American history, consisting of 1.6 million current and former Wal-Mart employees. Between 1996 and 2001, women working at Wal-Mart made approximately five per cent less than men doing similar jobs." Canadian Dimension, May 1, 2005. Documents made public in this lawsuit reflect not only discrimination but also other managerial issues that must be considered by the FDIC. See, e.g., "Wal-Mart Ignored Own Report," by Karen Gullo, Bloomberg News, July 16, 2005: "Wal-Mart Stores Inc. took no action on internal warnings seven years ago that it was falling short in promoting women, documents in a federal sex-discrimination lawsuit show.The world's largest retailer didn't carry out the 1998 recommendations of a diversity task force and disbanded the panel, according to company memos, reports and depositions filed in the case. Two years later, Wal-Mart had a reduced percentage of female managers."

Wal-Mart has been charged with discrimination not only by gender, but also by race. See, e.g., New York Times of July 14, 2005: "Two black truck drivers have filed federal lawsuits against Wal-Mart Stores in Arkansas, arguing that the company discriminated against them by denying them jobs because of their race. Lawyers who filed the suits are seeking class-action status." The asserted discrimination is not only against employees, but also consumers. See, e.g., Boston Globe of July 13, 2005: "Customers Sue Wal-Mart Over Alleged Bias, Suit Claims Cases of Racial Profiling" -- "In a lawsuit filed in US District Court in Boston yesterday, the consumers alleged they were followed, searched, humiliated, and in some cases, detained by greeters at the store after entering the retail center in 2002 or 2003.... The lawsuit, brought by one white consumer and nine minorities, including three African-Americans, several West Indians, and a Mexican shopper, alleges that Wal-Mart employees illegally detained the minorities until police arrived and searched bags or stopped them as they were leaving."

Rather than reform its practices, Wal-Mart targets its critics, including in paid advertisements it later, belatedly, apologized for. *See, e.g.*, Arizona Daily Sun of May 14, 2005: "Wal-Mart's corporate headquarters announced Friday the company would issue an apology to Flagstaff voters for an ad relating a Nazi book burning to the big-box ordinance. The company's apology came after condemnation of the ad by the Anti-Defamation League." Beyond that, as further examples of Wal-Mart's substantive violations, Wal-Mart "reached an out-of-court settlement in a child labor case in which teen clerks in three states were allowed to use heavy equipment in violation of safety laws. The company's vice chairman was fired a few months before his scheduled retirement after an accounting scandal became the subject of a criminal investigation." St. Petersburg Times, June 4, 2005.

This pattern of law-violation has given rise to shareholder resolutions, including by elected officials in New York. As reported in the N.Y. Post of June 2, 2005, "Wal-Mart Blasted for Rule-Breaking," the "shareholder group, co-headed by New York City Comptroller William Thompson Jr., called on Wal-Mart's board to set up a special committee to monitor Wal-Mart's future compliance with laws and regulations. The shareholders said they also were concerned about Wal-Mart's 24 violations of child labor laws in three states. Thompson said the board's laxity on compliance 'could be indicative of inadequate internal controls and a lack of board oversight and accountability.'" This is a standard that the FDIC must consider on this application, including at the public hearings ICP is hereby timely requesting.

While Wal-Mart is segmenting its actual proposal into pieces, seeking to charter this institution and then later expand it, the FDIC must consider in this proceeding all of the dangers raised by allowing this large, destabilizing, disinvesting and, ICP contends, presumptively disqualified company from entering the business of banking. ICP contends that this pattern of export of capital is relevant to, and must be considered on, Wal-Mart's application to get into banking, as a Community Reinvestment Act matter and otherwise. ICP also formally contends that several of Wal-Mart's documented business practices -- including predatory pricing, mislabeling of products, sale of merchandise made with child labor, etc. -- are adverse factors under the FDIC's regulations and under the CRA.

The record should reflect that this is by no means Wal-Mart's first attempt to slip into the banking industry. In 1999, ICP opposed the applications of Wal-Mart Stores, Inc., Walton Enterprises, L.P., Broadleaf Investments, Inc., et al. (collectively hereinbelow, "Wal-Mart") to become savings & loan holding companies by acquiring Federal BankCentre, a one-branch thrift in Oklahoma. *See, e.g.*, Reuters, "Group Tries to Block Wal-Mart Bank Effort, Advocates for Low-Income Groups Filed a Protest against the Retailer's Applications to Buy a Savings and Loan," e.g. in the Orlando Sentinel of July 24, 1999,[1] and the Associated Press, "Wal-Mart plan to open thrift draws fire," (*e.g.* in Boston Globe of July 24, 1999). That application was filed by Wal-Mart in an attempt to beat the Gramm-Leach-Bliley Act deadline. After that application failed, Wal-Mart tried to partner with Toronto Dominion Bank, and to buy an industrial loan company in California. Both forays failed. Now Wal-Mart tries the FDIC -- ICP urges the FDIC to hold hearings, and to deny, Wal-Mart's applications, including on CRA grounds.

Wal-Mart Destabilizes and Dis-Invests in Communities

Below in this comment, ICP presents for the record on this application a thumb-nail sketch of Wal-Mart's track record of destabilizing communities, including driving locally-controlled merchants out of business by predatory pricing, then siphoning off the assets and insured deposits that these local businesses used to deposit in local banks, and shifting the assets to Bentonville, Arkansas and the various Walton heirs' stock portfolios. This pattern has resulted in increasing opposition to Wal-Mart's proposals. See, as four examples just last month, the Denver Post of The Denver Post of June 28, 2005, "Wal-Mart foes pack hearing;" Charlotte (NC) Observer of June 5, 2005, "Wal-

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1 Reporting, for example, that "Wal-Mart said in its application that it would take a year to learn the banking business and then test bank branches in five stores before deciding on any possible future expansion to its thousands of other U.S. outlets. But ICP said Wal-Mart had not sufficiently addressed the issue of how its proposed banking business would comply with the Community Reinvestment Act, which mandates that banks make loans in poor areas where they take deposits. No one at Wal-Mart was immediately available to comment, but the company said in its application that it hoped to serve people who did not have easy access to banking services."

Mart battle goes to public;" Philadelphia Inquirer of June 3, 2005, "Wal-Mart plan brings out challengers;" the Madison, Wisc. Capital Times of June 2, 2005, "Rally Rips Wal-Mart on Health Care." *See also*, NBC Dateline of June 17, 2005, linking Wal-Mart to sweatshops in Bangladesh.

The FDIC should take note, and consider on Wal-Mart specifically, all of the dangers of mixing banking and commerce that have been raised (including not only risk to the insurance fund and taxpayers, but Wal-Mart's ability to use its status as an FDIC insured lender to forward its other interests, just the sort of "leverage" that Wal-Mart has shown itself more than willing to use, on its vendors and others, see supra). Note, for example, this statement by Wal-Mart's Thomas Patrick Seay, being deposed on February 7, 1996 in Forrest Drive Associates v. Wal-Mart Stores, Inc., 94 CVS 765: "if we want to to continue out program of expanding stores, relocating stores, building new stores, [continuing] our growth... then in today's financial environment we have to fund it ourselves." Emphasis added. Also, given the regulator-acknowledged dangers of sharing of private consumer information, consider the dangers of allow Wal-Mart and its data base of customers to own an insured financial institution and creditor.

Much has been written about the effects of Wal-Mart on the stability and local control of communities across the United States (this Comment contains citations to a number of sources the FDIC should review, and that ICP is incorporating into the record by reference). Numerous founded opposition include East Aurora and Ithaca; in Massachusetts, Northfield and Quincy; in Vermont, Williston and St. Albans; Lancaster, PA; Cleveland Heights, Ohio; Cottage Grove, Oregon; Fort Collins, Colorado; and Fernandina Beach, Florida [see ABC World News Now of June 30, 1999, Transcript # 990630003-j04]).

While some bank regulators go to great lengths to state that they cannot consider job loss (*see, e.g.*, the Federal Reserve Board's mega-merger decisions, for example its Wells Fargo - First Interstate approval order), ICP hereby puts into the record before the FDIC that Wal-Mart's negative effects on communities are not limited to job loss. Whereas the locally-based stores, pre-Wal-Mart, would deposit their receipts long-term in local banks (and these would be reinvested in the community, as loans), Wal-Mart has a practice of quickly transferring its daily earnings back to corporate headquarters in Bentonville, Arkansas. This is (FDIC / CRA - cognizable) DISINVESTMENT. It results in a decrease in credit availability from communities from which Wal-Mart siphons off money - a degree of disinvestment that Wal-Mart's state plans for its thrift would do little to counter-balance. The FDIC must inquire into and consider this CRA-relevant disinvestment by applicant Wal-Mart.

For all the foregoing reasons, ICP is requesting public hearings on this proposal, and is formal requesting that Wal-Mart's applications be dismissed or denied.

ICP is a protestant to these applications, and should be provided copies of all communications regarding the applications, and should be provided an opportunity to analysts have noted how Wal-Mart, to destroy competition, lowers its prices, then raises them once competitors have been driven out of business. Predatory pricing is acknowledged as illegal under the antitrust laws, violating the prohibitions against monopolization, conspiracies to monopolize, and attempts to monopolize that are found in the Sherman Act (15 U.S.C. § 1, *et seq.*). In addition, if the predator does not engage in below-cost pricing in all of its markets, predatory pricing constitutes "primary-line" price discrimination in violation of the Robinson-Patman Act (15 U.S.C. § 13, *et seq.*).

A 1995 study of Iowa showed that, since Wal-Mart's entry into the state in 1983, 50% of clothing stores had closed, 30% of hardware stores had closed, 42% of variety stores had closed, 26% of department stores had closed, 25% of building materials stores had closed, etc.. See also, What Happened When Wal-Mart Came to Town? May, 1996 Muller / Humstone study of Wal-Mart's economic impact on seven Iowa counties; and Ken Stone's 1995 study of Wal-Mart's impact on small Iowa towns from 1983 to 1993. See generally, Thomas Keon, Edward Robb, and Lori Franz, Effect of Wal-Mart Stores on the Economic Environment of Rural Communities, Business and Public Administration Research Center and College of Business and Public Administration, University of Missouri, 1989, incorporated herein by reference.

A study conducted by Residents for Responsible Growth of Lake Placid, New York, found that for every one job created by Wal-Mart, at least 1.5 jobs are lost. (Other sample New York State communities in which Wal-Mart has faced wellparticipate in any communications between the applicants and your agency. All documents and records related the proposal (on an ongoing basis), and other records in your agency's possession related to the proposal, should be provided as quickly as possible, as they become available, to:

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If you have any questions, please immediately telephone the undersigned, at (718) 716-3540.

Respectfully submitted,

Matthew Lee

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